

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

_____)	
In Re:)	Chapter 11
)	
FRANKLIN ENVIRONMENTAL)	No. 02-17897-CJK
SERVICES, INC.)	
)	
Debtor)	
)	
_____)	

SETTLEMENT AGREEMENT

WHEREAS, on or about November 1, 2002, Franklin Environmental Services, Inc. ("the Debtor"), filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended (the "Bankruptcy Code"); and

WHEREAS, on April 8, 2003, the United States Bankruptcy Court for the District of Massachusetts, Eastern Division (the "Bankruptcy Court") entered an order confirming the *Joint Plan of Reorganization* (the "Plan") proposed by the Debtor and the Official Committee of Unsecured Creditors, pursuant to which Robert P. Wexler (the "Creditors' Trustee") was appointed as the fiduciary of the Creditor's Trust created in accordance with the Plan and was given the powers, duties, and obligations set forth in the Plan and in the *Creditor's Trust Agreement* attached to the Plan as Exhibit A; and

WHEREAS, on or about June 6, 2003, the United States, on behalf of the Environmental Protection Agency (the "EPA"), filed a Proof of Claim against the Debtor's estate; and

WHEREAS, the Proof of Claim asserts a claim, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., for at least \$ 60 million for unreimbursed environmental response costs incurred by the United States at the Beede Waste Oil Superfund Site located in Plaistow, New Hampshire (the "Beede Site"), and for response costs incurred in the future by the United States at the Beede Site (the "EPA Claim"); and

WHEREAS, the Proof of Claim was asserted as a general unsecured claim; and

WHEREAS, on October 17, 2003, the Creditors' Trustee filed with the Bankruptcy Court the *Omnibus Objection to Claims and Request for Preliminary Hearing* (the "Claims Objection"), wherein the Creditors' Trustee objected to, among other claims, the EPA claim; and

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve the EPA Claim;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. The EPA Claim shall be allowed as an Unsecured Claim in the amount of \$346,737.17, and paid as a Class 3 Unsecured Claim without discrimination in accordance with the terms of the Plan, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$346,737.17.

2. Payment on the EPA Claim shall be made by either check or Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing

CERCLA Number 01-2003-0038, in accordance with instructions provided by the United States to the Creditors' Trustee after execution of this Settlement Agreement. Any EFTs received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

3. Only the amount of cash received by EPA (or net cash received by EPA on account of any non-cash distributions) from the Creditors' Trustee on behalf of the Debtor's estate under this Settlement Agreement for EPA's allowed Unsecured Claim, and not the total amount of the allowed claim, shall be credited by EPA to its account for the Site, which credit shall reduce the liability of non-settling potentially responsible parties to EPA for the Site by the amount of the credit.

4. The total amount paid by the Creditors' Trustee on behalf of Debtor's estate pursuant to this Settlement Agreement shall be deposited in a site specific special account within the Hazardous Substance Superfund (more accurately referred to as a "reimbursable account") to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

5. In consideration of the payments or distributions that will be made by the Creditors' Trustees on behalf of the Debtor's estate under the terms of this Settlement Agreement, and except as provided in paragraph 6, the United States covenants not to bring a civil action or take administrative action against the Debtor or the Creditors' Trustee pursuant to Sections 106 and 107 of CERCLA relating to the Beede Site. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Creditors' Trustee on behalf of Debtor's estate of his obligations under this Settlement Agreement. This covenant not to sue extends only to the Debtor and the Creditors' Trustee and does not extend to any other person.

6. The covenant not to sue set forth in the previous paragraph does not pertain to any matters other than those expressly specified in the previous paragraph. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor's estate with respect to all other matters, and specifically with respect to: liability for damages for injury to, destruction of, or loss of natural resources; liability for response costs that have been or may be incurred by federal agencies which are trustees for natural resources; claims based on a failure by the Debtor to meet a requirement of this Settlement Agreement; and claims for any site other than the Beede Site.

7. With regard to claims for contribution against the Debtor's estate for matters addressed in this Settlement Agreement, the Debtor's estate and Creditors' Trustee are entitled to such protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

8. The Creditors' Trustee on behalf of the Debtor's estate covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Beede Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Beede Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

9. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

10. This Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. This Settlement Agreement will also be lodged and submitted for public comment following notice of the Settlement Agreement in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

11. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

12. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

13. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed to be original but all of which together shall constitute one and the same instrument. In addition, this Settlement Agreement may be executed by facsimile signature.

FOR THE UNITED STATES OF AMERICA

7.6.04
Date

THOMAS L. SANSONETTI
Assistant Attorney General
Environmental Enforcement Section

6/14/04
Date

PATRICIA A. MCKENNA
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
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Date

7/2/04

IRA W. LEIGHTON /
Deputy Regional Administrator
U.S. EPA New England – Region I

Date

6-22-04

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U.S. EPA New England – Region I
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Boston, MA 02114-2023

FOR THE FRANKLIN ENVIRONMENTAL SERVICES, INC. CREDITORS' TRUST

June 14, 2004

Date

Franklin Environmental Services, Inc.

Name of Debtor
c/o The Tron Group, 53 State Street
Boston, Massachusetts 02109


Address

Telephone Number

By:

Robert P. Wexler

Name of Officer (please type or print)

 Signature of Officer

Creditors' Trustee

Title